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August 5, 2008

**BY E-FILING, E-MAIL
& HAND DELIVERY**

DM2

The Honorable Vincent J. Poppiti
Blank Rome, LLP
1201 Market Street, Suite 800
Wilmington, DE 19801

Re: *Honeywell International Inc., et al. v. Apple Computer, Inc., et al.*
C.A. No. 04-1338-JJF (Consolidated)

Dear Judge Poppiti:

I am writing in light of Judge Farnan's Oral Order from Friday referring essentially all pending case management issues to Your Honor. Honeywell is mindful that such issues should be taken up in an organized manner, and, therefore, wishes to bring one newly referred issue to Your Honor's immediate attention because it is related to the "Accused Products" discovery that Your Honor is set to decide by this Friday, August 8.

In particular, there is a potential convergence between this pending issue concerning Accused Products, which was discussed last Wednesday, and how it relates to Honeywell's current infringement charge against the Accused Modules manufactured by Optrex and Samsung SDI ("SDI") that will be set for trial first. Honeywell submits that this issue must be addressed in a consistent and fair manner as between these two classes of defendants.

As Honeywell has explained, it has expressly identified and accused of infringement certain modules manufactured by Optrex and SDI. In response, Optrex and SDI have challenged the validity of the '371 patent, claiming that it is obvious under § 103 of the patent statute. Under established precedent, including the Supreme Court's recent *KSR* decision, one factor relevant to this inquiry is the commercial success of products using the claimed invention. Optrex and SDI are contesting Honeywell's contention that products using the invention have achieved the requisite commercial success. This litigation position prompted Honeywell to seek discovery from the stayed Customer Defendants to explore the factual

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underpinnings relevant to this issue (D.I. Nos. 693 and 724, attached as Exhibits 1 and 2).¹ Honeywell filed this motion in early 2007; it was considered by Judge Thyng, but it was not decided.

During the status conference held by Judge Farnan on April 2, I raised the pendency of this discovery motion with Judge Farnan, noting that it was related to the issue of the status of the Customer Defendants. Although Judge Farnan did not refer this specific issue to you at the time, he acknowledged that this issue would ultimately have to be addressed:

MR. GRIMM: The issue that I want to raise, your Honor, now that they [the Customer Defendants] are parties in the case, it's one thing to ask for discovery from them to establish commercial success and other indicia of non-obviousness. It's another thing to have them potentially dismissed from the case and we have to have third party discovery to establish those.

THE COURT: If you don't agree on some mechanism to get that discovery post their dismissal, then you'll come to me and I will talk with them and see what we can work out. Hopefully, for every limited resources of both your clients and yourselves we're going to get it done.

I understand your strategy problem. I'll take that up later, either from you or from them.

Honeywell referred to this pending motion in its recent submission to Your Honor, but did not feel it appropriate at the time to seek relief, given the limited scope of the original Order of Reference. Now, however, given Judge Farnan's recent Order, this issue has now been effectively referred to Your Honor and it is ripe for consideration.

Honeywell notes for the record that this issue of commercial success is related in many respects to the one currently under consideration. Regardless of whether Honeywell has identified a specific end product that uses a specifically accused LCD module, the actual use of such modules in Customer Defendants' products bears directly on the disputed issue of commercial success in the United States. It would be prejudicial to deny such relevant information to Honeywell, especially when the Manufacturer Defendants are claiming that the '371 patent is invalid.

Honeywell respectfully calls the relationship between these two issues to Your Honor's attention because, clearly, depending upon how Your Honor resolves the pending issue on August 8, it could have consequences not only as to the procedural status of the Affected

¹ The various Defendants' responses are at D.I. Nos. 691, 694, 695, 732, and 733, which we can provide to Your Honor upon request.

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Defendants, but also on the substantive merits of Honeywell's claims against the Manufacturer Defendants. Accordingly, Honeywell requests that Your Honor consider the prior briefing set forth in D.I. Nos. 693 and 724 (Exhibits 1 and 2) in evaluating the issues to be decided on August 8.

Respectfully,

A handwritten signature in black ink, appearing to read "Thomas C. Grimm". The signature is fluid and cursive, with a prominent initial "T" and a stylized "G".

Thomas C. Grimm (#1098)

TCG

Enclosures

cc: Dr. Peter T. Dalleo, Clerk (by e-filing, w/encls.)
All Counsel of Record (by e-filing and/or e-mail, w/encls)
(see attached Certificate of Service)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 5, 2008, the foregoing was caused to be electronically filed with the Clerk of the Court using CM/ECF which will send electronic notification of such filing to all registered participants.

In addition, the undersigned hereby certifies that true and correct copies of the foregoing were caused to be served via electronic mail on August 5, 2008 upon the following parties:

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